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LACKENBACH SIEGEL, LLP			EXAMINER	
LACKENBACH SIEGEL BUILDING			KEENAN, JAMES W	
1 CHASE ROAD				
SCARSDALE, NY 10583			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,871

Applicant(s)

WEIDEMANN ET AL.

Examiner

James Keenan

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 and 45-122 is/are pending in the application.
- 4a) Of the above claim(s) 26-43 and 50-122 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 and 45-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. Applicant's amendment filed 6/02/09 incorrectly identifies the status of claims 23 and 24 as "withdrawn". These claims have not been withdrawn and will be treated on the merits in this Office action.

The amendment also specifies deleting paragraph 6 on page 2, line 2 through page 3, line 7. It is believed applicant meant to refer to the paragraph beginning on page 2, line 20.

Clarification/correction of the above is required.

2. Claims 26-43 and 50-122 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/02/08.

3. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 1/16/03 (103 01 591). It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b).

4. The disclosure is objected to because of the following informalities:
page 36, line 3, the reference to fig. 23 should apparently be to fig. 28.
Appropriate correction is required.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-25 and 45-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Despite applicant's amendment, method claims 1-12 are still not entirely written with proper method terminology. Although steps of "lifting" and "moving" are now recited in claim 1, phrases such as "when unloading takes place", "the car.. is moved", "the car ... is seated", "the car ... is lowered when loading takes place", "being carried out by means of ..." do not clearly and positively recite method steps and render the scope of the claim unclear.

Similar recitations in the dependent claims, such as "horizontal leveling ... is carried out" in claim 3, are indefinite for the same reason.

Also in claim 1, line 8, "lofting" should presumably be --lifting--;

and penultimate line, it is not clear if the recitation of "lifting devices" refers to the same lifting devices previously recited in the claim.

Claims 4-7, the recitations of "the positioning device", "platform level", the direction of travel", and "the platform" lack antecedent basis.

Claim 7, "irrespective of ... a car frame" is unclear.

Claim 8, the recitation "guided in a way which is secured against tilting" is vague.

Claims 9 and 10, there is no clear antecedent basis for plural "cars" or "car frames", a singular "lifting device", or "the direction of travel".

Claims 11 and 12, there is no antecedent basis for "the first car".

Claim 13, line 2, reference is made to "an unloading and loading position", but reference is later made to "the unloading position" and "the loading position". Thus it is unclear whether there is a single position for loading and unloading or separate loading and unloading positions.

Claim 14 refers to plural "unloading and loading positions".

Claim 15, last line, and claim 17, last line, the phrase "in particular" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. The desired scope and coverage of these claims can therefore not be determined

Claim 20, it is not clear what is meant by "the outside next to the track rails".

Claim 21, "based on the wedge principle" is vague.

Claim 22, last line, and claim 24, line 2, there is no clear antecedent basis for "the loading and/or unloading face".

Claim 23, "for example" is indefinite.

Claims 23 and 24, there is no antecedent basis (in claim 17) for "the load supports".

Claim 48, line 2, there is no antecedent basis for nor it is not clear what is meant by "all the drives ...".

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-25 and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringer (US 4,522,546) in view of Glassmeyer (US 4,049,135), both previously cited.

Referring first to claim 13, Ringer teaches a method of transferring cargo between a train and a road vehicle or between first and second trains, by utilizing lifting devices 54 which are at least temporarily "anchored to the track bed", as broadly recited (note gripping jaws 45, col. 7, lines 30-36), comprising moving a first train with at least a first cargo-carrying car into an unloading position (col. 5, lines 9-28), using the lifting devices to lift the cargo off the car (col. 8, lines 10-21), moving the cargo transversely of the longitudinal plane of the car until it is no longer above the car (col. 5, lines 7-30), moving a second train with at least a second car into a loading position (col. 5, lines 1-3), and loading the cargo onto the second car of the second train by reversing the unloading steps (i.e., moving the cargo transversely over the second car and lowering it thereonto by means of the lifting devices).

Ringer does not teach that the car superstructure of the first car is separate from the car frame and is moved with the cargo to a corresponding car frame of the second car.

Glassmeyer shows a method of moving cargo containers from one vehicle to another, wherein one of the vehicles has a separate frame 12 and superstructure 16,

and where in at least certain circumstances (e.g., fig. 2) the cargo and superstructure are moved as a unit to the other vehicle.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the process of Ringer by utilizing a separate car superstructure movable with the cargo, as Glassmeyer specifically teaches that cargo can be transferred between vehicles with or without a separate vehicle superstructure.

Re claims 14-16, the cargo can clearly be transferred from the first car to the second car either while the trains are situated on adjacent tracks G' and G'', or after the first train has left, and the second train has moved into the position vacated by the first train.

Re claims 1-12, the method could obviously be applied to a single car (i.e., unloading a car and the loading the same car with a different load) or separate cars (unloading a first car and then loading a second car with the load from the first car).

Re claim 17, the lifting devices of Ringer are clearly "supported directly or indirectly and independently of the car frame ... adjacent to the tracks", as broadly recited.

Re claims 18 and 19, Ringer shows positioning and leveling devices (figs. 5-7) as broadly recited.

Re claim 20, Ringer shows multiple lifting devices along the tracks.

Re claim 21, the lifting devices are hydraulic.

Re claim 22, the lifting devices interact with the underside of the cargo.

Re claims 23 and 45-47, note motor-driven roller elements 58.

9. Claims 1-25 and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringer in view of Glassmeyer, as applied above, and further in view of Gebhardt (US 4,715,766) or Tanabe (JP 59-194938), both previously cited.

While Ringer as modified is believed to show or suggest all of the features set forth in the claims, as noted above, this rejection is presented to strengthen the examiner's position in the event it is shown that the combination of references do not teach all claim limitations, or if the claims are amended to more clearly and distinctly set forth elements of the claims in a manner which overcomes the rejection.

As noted, Ringer teaches a temporary connection (i.e., releasable gripping means) of the lifting devices to the track bed. The examiner is of the opinion that this meets the broadly recited requirement of being "anchored to the track bed" and "supported directly or indirectly ... adjacent to the tracks", as explained above.

However, even if this is shown to be incorrect, or the claims are further limited to invalidate this interpretation, Gebhardt and Tanabe are cited as showing similar loading/unloading devices which are clearly anchored to the track bed and supported adjacent to the tracks, and in view thereof, it would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Ringer with such a feature, to provide a more permanent and secure mounting of the lifting devices.

10. Applicant's arguments filed 6/02/09 have been fully considered but they are not persuasive and/or are moot in view of the grounds of rejection.

Applicant argues re claims 1 and 13 that Ringer does not teach lifting devices anchored to the track bed. As noted above, Ringer is believed to show this feature as broadly claimed, but even if it doesn't, Tanabe and Gebhardt are believed to overcome any deficiency of Ringer.

Applicant also argues that Glassmeyer does not suggest the obviousness of a separate car frame and superstructure because the cargo container without the separate frame is carried in an aircraft. This is not persuasive because the container and frame are carried on the transport truck, which is more analogous to applicant's railcar (i.e., wheeled land transport vehicles).

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Keenan/
Primary Examiner
Art Unit 3652

jwk
8/06/09